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September 25, 2002

SUMMARY OF
***EX PARTE* PRESENTATION**

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

Re: Ex Parte Presentation
CC Docket Nos. 01-338, 02-33, 01-337.
CS Docket No. 02-52; GN 00-185.

Dear Ms. Dortch:

On September 24, 2002, the undersigned and Lawrence E. Sarjeant, on behalf of the United States Telecom Association (USTA), met with Kyle D. Dixon, Deputy Media Bureau Chief and Special Counsel to the Chairman for Broadband. The purpose of this meeting was to discuss USTA's position regarding broadband high-speed Internet access as previously set forth in its comments and reply comments filed in the above-referenced proceedings.

In the meeting, USTA identified and discussed the core policy principles in the attached outline. USTA specifically discussed the following issues: regulatory parity, universal service, access by Internet service providers (ISP), unbundled network elements (UNE), and the option of rate-of-return carriers to "opt out" of broadband deregulation.

USTA stated that cable modem service is the current front runner in the broadband mass market. Incumbent local exchange carriers (ILEC) have no market power in the broadband mass market, or in the broadband larger business market, and are therefore non-dominant in both the retail and wholesale broadband markets. USTA went on to explain that the FCC has determined in the broadband proceedings that cable modem service is an interstate information service and that parity requires that wireline broadband Internet access service should receive the same regulatory treatment when the broadband transmission is provided to an affiliated ISP. Moreover, USTA then explained that to ensure regulatory parity among the various broadband platforms, to the extent that a wireline broadband entity is providing stand-alone broadband transmission to unaffiliated ISPs, that offering should be classified as a private carrier service, not a common carrier service.

Moreover, USTA emphasized that open access for ISPs to broadband transport should be encouraged but not mandated because providers of high-speed Internet access have

sufficient monetary and customer service incentives to ensure access for ISPs. USTA noted that open access is not mandated for cable modem by FCC rules.

USTA stressed that the obligation to contribute to the universal service fund should apply equally to all providers of broadband telecommunications and broadband telecommunications services regardless of the technology or platform employed. Section 254 of the Communications Act of 1934, as amended, provides the FCC with the discretion to require providers of interstate telecommunications to contribute to universal service support mechanisms should the FCC find that doing so serves the public interest. USTA believes that the public interest requires such a finding.

USTA emphasized that the FCC should permit carriers that are eligible for participation in the NECA pools and tariffs to have their DSL services regulated as a Title II service. Certain rural and high cost areas can present unique circumstances that require taking a different approach to providing for the reasonable and timely deployment of broadband services. Allowing such carriers this option is both lawful, consistent with past actions by the FCC to address the unusual circumstances of rural wireline carriers and is in the public interest. USTA stated its belief that the definition of information services does not have to be so rigid as to not be able to accommodate an exception for NECA-eligible carriers.

USTA responded to questions concerning the FCC's Triennial Review proceeding and its relationship to the Broadband proceedings in regards to high-capacity loops and line sharing. USTA explained that new entrants are not impaired in their ability to provide high speed Internet access service without access to ILEC high capacity loops as UNEs. The dominant provider of high-speed Internet access is cable. ILECs should not be required to provide their high-speed facilities to other would be competitors in the high-speed Internet access market as a UNE considering the competition that ILECs face from other broadband platforms. USTA argued that section 251(c)(3) of the Communications Act of 1934, as amended, limits the availability of UNEs to telecommunications services providers for use in the provisioning of telecommunications services.

In accordance with Section 1.1206(b)(2) of the Federal Communications Commission's (FCC) rules, this letter and the attached outline used during the meeting are being filed electronically with your office. Please feel free to contact me at (202) 326-7271 should you have any questions.

Sincerely,

(s)_____
Michael Thomas McMenamin
Associate Counsel

Attachment
cc: Kyle D. Dixon

UNITED STATES TELECOM ASSOCIATION
BROADBAND POLICY

- The broadband market has several substitutable platforms: wireline, wireless, satellite and cable.

- The broadband market should be viewed as an interstate market and should not be subject to state regulation. (*See* GTE Tariff Decision regarding DSL and FCC Orders concerning Internet Dial-Up service as related to reciprocal compensation).

- The FCC should find that retail and wholesale ILEC-provided broadband services are non-dominant and therefore not subject to tariffing requirements. (Both Mass Market and Larger Business Market).

- This deregulation should include market-based pricing freedom.

- The provision of wireline broadband Internet access service over a provider's own facilities is an information service.

- The transmission component of the end-user wireline Internet access services provided over the above facilities is "telecommunications" and not "telecommunications services."

- To ensure parity in regulatory treatment among the various broadband platforms, to the extent that a wireline broadband entity is providing stand-alone broadband transmission to unaffiliated ISPs, that offering should be classified as a private carrier service, not a common carrier service.

- In order to ensure effective advanced services deployment and reasonable pricing, carriers eligible for participation in the NECA pools should be allowed to "opt out" of broadband deregulation. In addition, such carriers may continue to have broadband services regulated under Title II of the Act and may keep broadband in the NECA pools and tariffs.

- Open access (defined as access by independent Internet Service Providers to provide content over the broadband network) should be encouraged but not mandated.

- An obligation to contribute to the universal service fund should apply equally to all providers of broadband regardless of the technology or platform used to provide the service.

- There should be a presumption against government or municipal operation of telecommunications networks generally, and broadband networks specifically, when private industry provides or indicates a willingness to provide such telecommunications service at a reasonable price. Government should not be permitted to use its governmental authority to advantage any government owned network competing with non-government owned networks.

- Municipalities should not impose burdensome rights-of-way requirements on broadband providers. Fees charged, if any, for public rights-of-way access should not exceed the actual and direct cost incurred in managing the public rights-of-way and the amount of public rights-of-way actually used by the broadband provider. In-kind contribution process to public rights-of-way should not be required. The FCC should vigorously enforce existing laws, (*e.g.* U.S.C. § 253).